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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Z.K., a Minor.	B292770
M.B. et al., Petitioners and Respondents, v. S.K., Objector and Appellant.	(Los Angeles County Super. Ct. No. 17CCAB00003)
In re J.K., a Minor.	B292779
M.B. et al., Petitioners and Respondents, v. S.K., Objector and Appellant.	(Los Angeles County Super. Ct. No. 17CCAB00004)

APPEAL from the judgments of the Superior Court of Los Angeles County, Margaret S. Henry, Judge. Affirmed.

The Law Office of Evan D. Williams and Evan D. Williams, for Objector and Appellant.

Law Office of Gradstein & Gorman, Jane A. Gorman and Seth F. Gorman, for Petitioners and Respondents.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Minors.

INTRODUCTION

These appeals arise from judgments terminating the parental rights of father S.K. (Stephen) and freeing minors Z.K. and J.K. for adoption by their stepfather, respondent M.B. (Marc).¹ Minors' mother, J.K. (Jacqueline) is also a respondent in these appeals.

Stephen and Jacqueline are the biological parents of the minor boys. In 2008, when the children were very young, Stephen and Jacqueline divorced. Jacqueline remarried, and her husband, Marc, became a stable father figure to the boys. Although Stephen had visitation rights, he was inconsistent in his communication with the boys. Stephen was also abusive to the children, to Jacqueline, and to Marc.

Marc and Jacqueline relocated twice between September 2011 and the present. Each time, the relevant court provided

¹ For purposes of clarity, we refer to the adults by their first names.

Stephen a clear path toward reunification, ordering family therapy and visitation rights. Stephen did not participate in therapy or visitation. In fact, he shunned his children.

The trial court found Stephen intentionally abandoned his children between September 2011 and October 2016 within the meaning of Family Code section 7822. The trial court also found it was in the children's best interest to terminate Stephen's parental rights and free the children from his custody and control to allow Marc to legally adopt them.

Substantial evidence supports the trial court's judgments. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2001 mother Jacqueline and father Stephen married in Australia. In May 2004, their first son Z.K. was born; in September 2005, their second son J.K. was born. In May 2006, the family moved from Australia to North Carolina.

In 2008, Jacqueline and Stephen separated and executed an agreement stipulating they would share joint legal custody of the children -- Jacqueline would have primary physical custody and Stephen would have visitation rights. Both agreed Stephen would initially have a minimum of two evening visits per week and, beginning June 2009, he would have one overnight weekend visit per month. Per the agreement, and among other requirements, Stephen was to pay \$2,100 in monthly child support; pay all hospital, medical, dental, orthodontic, optometric, therapy, and drug expenses either out-of-pocket or through health insurance; and pay for extra-curricular activities, subject to certain terms and conditions.

Jacqueline and Marc married in North Carolina in October 2009. They resided with the boys approximately one mile away from Stephen.

Between May 2008 and September 2011, Stephen typically saw the children on Saturdays and Sundays. Stephen was inconsistent with his visits, and the children would sometimes return hungry and very thirsty, complaining Stephen would not give them water. Stephen disparaged Jacqueline to the children and on one occasion told Z.K. that Jacqueline would be dead soon. Stephen did not attend any of the children's doctor's appointments or sporting events. He attended approximately three to four school events and meetings. Over time, Stephen saw the children less and less, and would fail to show up to take the children to birthday parties and other events.

Via e-mail, Jacqueline frequently encouraged Stephen to participate more in the children's lives and establish a consistent visitation schedule. She invited Stephen to come to one of Z.K.'s birthday parties, for example, but he refused. Stephen often replied to Jacqueline's e-mails by insulting her with vulgar and demeaning remarks. Jacqueline suggested post-divorce family counseling, but Stephen responded he did not believe in therapy.

Although overnight visits could have started in June 2009, Stephen did not schedule an overnight visit with the children until October 2010; he then cancelled at the last minute. Ultimately, Stephen exercised approximately three overnight visits between 2008 and 2011. In an e-mail dated February 2011, Stephen told Jacqueline he would no longer be visiting the children. Stephen also told Jacqueline he had made a video in which he said "terrible things" about her, and that the children

had to view the video as a precondition to receiving any inheritance from him.

Stephen's last face-to-face contact with the children was in September 2011, at J.K.'s sixth birthday party. Stephen arrived, gave J.K. a card, and began screaming at Jacqueline about paying child support. When Marc came outside, Stephen punched him in the face. The children were present and witnessed the attack. Later that evening, Jacqueline received a call from law enforcement directing her, Marc, and the children to return home for police interviews. Stephen had called the police claiming it was Marc who perpetrated the assault. Ultimately, Stephen was charged and pled guilty to domestic violence and trespass.

In November 2011, Jacqueline and Stephen executed a settlement agreement permitting Jacqueline and Marc to move to Wisconsin with the children. Stephen was entitled to visit with the children on the second weekend of each month; the visits would initially be supervised by a nanny selected by Jacqueline. Stephen's visits would continue to be supervised for at least one year, and supervision would continue until Stephen completed child abuse prevention and domestic violence programs (which he completed by June 2012). Jacqueline also agreed to pay for 75 percent of Stephen's travel expenses up to a maximum of \$400. Stephen consented to the relocation and Jacqueline agreed to dismiss a pending domestic violence protective order against him.

After they moved to Wisconsin, the children attempted to call Stephen multiple times and left him voice messages. At one point, Stephen blocked his phone number and the boys could not get through to him. When they finally reached him, Stephen told the boys he would not be able to see them until they turned 18;

he told them not to call him again. Jacqueline continued to encourage Stephen to have contact with the children. In January 2012, Stephen sent an e-mail to Jacqueline stating he would only talk to the children using a “voice disguiser” on a pay phone, and in the call the boys could not ask him any questions or identify him as their father.

In February 2012, after the move to Wisconsin, Stephen sent Jacqueline a list of adoption attorneys. Jacqueline e-mailed Stephen asking him to explain the meaning of the list. In his reply, Stephen claimed Jacqueline had proposed that Marc adopt the children; Jacqueline denied ever suggesting adoption. In March 2012, Stephen sent Jacqueline a conciliatory and apologetic e-mail. He told Jacqueline that he wanted the boys to be adopted as a “gift.” To gain closure and some sense of satisfaction, Stephen wrote, he intended to sever all ties with the boys. Jacqueline did not want to agree to adoption because she still believed it would be best for the children to have Stephen in their lives and she hoped things would improve.

In May 2012, Stephen asked to visit with the boys. The visit was scheduled for a weekend in July, and Stephen asked that the exchange take place at a public hotel. Jacqueline arranged for a nanny to monitor the visit and brought the children and the nanny to the hotel at the scheduled time. Stephen did not appear. Stephen later said he had flown out to Wisconsin and was near the hotel lobby. However, when he saw Jacqueline with the children, he believed his freedom and life were in danger because Jacqueline could have “set up . . . a trap.” Stephen left without seeing the boys.

One day later, Stephen e-mailed Jacqueline asking whether she was going to initiate the adoption. He told Jacqueline to

either agree to the adoption or tell the children he was dead. In August 2012, Stephen sent Jacqueline two subsequent e-mails again stating he wanted the children to be adopted by Marc. Jacqueline still believed the situation could improve and felt it was in the children's best interest to have a relationship with their father. Stephen was in therapy at the time and she continued to hope he would be able to co-parent with her.

In March 2013, Jacqueline and Stephen signed a Wisconsin stipulation and court order for reunification therapy between Stephen and the children. Initially, the children would meet with a family therapist, Dr. Sheryl Dolezal. Dr. Dolezal would then set the time, length, frequency, and manner of therapeutic sessions between Stephen and the children. Over the next four months, Jacqueline brought the children to four-to-six sessions with Dr. Dolezal. Stephen admitted having no contact with Dr. Dolezal.

After a hearing in June 2013, Stephen was found in contempt of court in North Carolina for failure to pay child support, medical expenses, and his share of expenses for school tuition and extracurricular activities. After he was found in contempt, Stephen paid the money rather than spend 10 days in jail. Many of Stephen's subsequent payments were accompanied by disparaging comments such as "criminal psychopath blackmail," and "lying sack of turd."

Meanwhile, Marc landed a job opportunity in Los Angeles. After a hearing in June 2013, the Wisconsin court issued an order dated July 18, 2013 granting Jacqueline's request to relocate to California with the children. Jacqueline and Stephen would continue the reunification process and Jacqueline would pay Stephen's travel expenses. The court noted in the order that the

reunification process proceeded slowly because of the history of the case and “the actions of [Stephen].” The court nonetheless determined that it would be in the children’s best interest for Stephen to reestablish a relationship with them, and ordered Jacqueline to find a therapist in Los Angeles to replace Dr. Dolezal and facilitate an appropriate reunification plan.

In July 2013, Jacqueline was advised via an e-mail through the parties’ counsel that Stephen wished to proceed with terminating his parental rights. Jacqueline was confused since they had just gone to court and set up a reunification plan. She asked for clarification whether Stephen wanted to pursue reunification or adoption. Shortly thereafter, Stephen’s counsel stated Stephen wanted to pursue adoption.

Nevertheless, Jacqueline located reunification therapist Dr. Shatz in Los Angeles. In September and November 2013, Stephen contacted Dr. Shatz and briefly discussed his relationship with the children; he also told her he was contemplating terminating his parental rights.

In April 2014, Stephen filed an action in California to eliminate the order that reunification efforts proceed through a family therapist. He also requested visitation. The court rejected Stephen’s modification request.

In December 2014, Stephen agreed to begin reunification therapy with Dr. Shatz and on March 31, 2015, he signed a stipulation for reunification. On September 18, 2015, Stephen met with Dr. Shatz for five hours in her Los Angeles office.

Dr. Shatz spoke with Jacqueline alone and then interviewed the children separately and together. Both boys reported numerous incidents of past abuse by Stephen during their visits in North Carolina. They stated when getting

something out of the trunk of his car, Stephen pushed the boys in the trunk and drove away. They were terrified, very hot, and felt they could not breathe. When he stopped the car and let them out of the trunk, he laughed at them. On another past occasion, Stephen sent the boys outside during a very windy storm, locked them out of the house, and laughed at them sadistically. The boys told stories of pillow fights where Stephen became angry and hit them with a wooden spoon. He ordered them upstairs, locked them in a closet, and left them with no food or water for hours. Stephen called Jacqueline a “bitch” in front of the boys, and told them she should be put in a furnace while the boys watch her die. Stephen would not allow the boys to call their mother; one night, they snuck out of their bedrooms to call her but the line was dead.

Dr. Shatz set up a Skype call between Stephen and the children for October 5, 2015. Although the call seemed to go well, Z.K. told Dr. Shatz afterwards that he was “sad, mad, happy, and confused.” One week later, Jacqueline brought the children to see Dr. Shatz because the children had become uncharacteristically anxious and sad since the Skype call. J.K. had nightmares about seeing Stephen and having to live with him again; Z.K. continued to report anxiety and unhappiness. Z.K. shared a memory with Dr. Shatz he had never disclosed to anyone. He reported a time when the children and Stephen were urinating, and Stephen shook his penis at the boys, laughed, and told them someday their penises would look like his. On another occasion Stephen flicked Z.K.’s penis. In addition, Z.K. reported Stephen watched a lot of pornography involving children stripping naked, “laughing on poles,” and doing tricks. Dr. Shatz asked Z.K. to draw a picture of what he observed the little girls wearing and Z.K. drew

what appeared to be the back of a g-string. After informing the parents, Dr. Shatz reported the information to child welfare authorities and immediately suspended reunification therapy until everything was “figured out.”

One month later, in November 2015, Jacqueline filed a request with the court in Los Angeles to terminate reunification therapy. On June 15, 2016, the court granted the request.

On October 21, 2016, six years after his last in-person visit with his sons and one year after their last telephone call, Stephen petitioned the court to modify the custody orders and transfer full custody of the children to him. The court denied the motion and stated: “[t]he Court will not order ad hoc contact between [Stephen] and the minor children . . . without an appropriate plan for reunification therapy, if such reunification is even workable under the circumstances of this proceeding. Based on the past circumstances, the Court will not subject the children to unprepared and non-professional interaction” with Stephen.

On January 30, 2017, Jacqueline and Marc filed the instant petitions to terminate Stephen’s parental rights and allow Marc to adopt the boys. After a lengthy trial at which Jacqueline, Marc, Stephen, Z.K., and J.K. testified, the court freed the children from Stephen’s parental custody and control pursuant to Family Code section 7822. The court found Stephen intentionally abandoned the children well in excess of the one-year statutory period. It also found termination of Stephen’s parental rights was in the best interests of the children.

Stephen timely appealed. He alleges the trial court erred by finding he intended to abandon the children, and by making the determination that terminating his parental rights was in their best interest.

DISCUSSION

A. Standard of Review

We review the trial court's findings under Family Code section 7822 for substantial evidence. (*Adoption of A.B.* (2016) 2 Cal.App.5th 912, 922.) We have no power to evaluate the credibility of the witness, resolve conflicts on the evidence, or determine the weight of the evidence, and we construe the evidence in a manner that favors the court's order. (*Id.* at pp. 922-923.) It is appellant's burden on review to show the evidence is insufficient to support the trial court's findings. (*Id.* at p. 923.)

B. Family Code Section 7800 et seq.

The purpose of terminating a parent's rights and freeing a child for adoption "is to serve the welfare and best interest of a child by providing the stability and security of an adoptive home when those conditions are otherwise missing from the child's life." (Fam. Code, § 7800.)

In pertinent part, Family Code section 7822 provides that a petition for freedom from parental custody and control may be brought when: "[o]ne parent has left the child in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent, with the intent on the part of the parent to abandon the child." (Fam. Code, § 7822, subd. (a)(3).) Further, "failure to provide identification, failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent." (*Id.*, subd. (b).)

Accordingly, a finding of abandonment is warranted where (1) the child was left with another; (2) without provision for

support or without communication from the parent for the one-year statutory period; and (3) with the intent of the parent to abandon the child. (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1010.) The one-year period of abandonment does not refer solely to the year immediately preceding the filing of the petition to terminate parental rights. (*Adoption of A.B., supra*, 2 Cal.App.5th at p. 922.) Additionally, the parent need not intend to abandon the child permanently; intent to abandon for one year is sufficient to satisfy Family Code section 7822. (*Adoption of Allison C., supra*, at pp. 1015-1016.)

C. Substantial Evidence Supports the Court's Order Terminating Stephen's Parental Rights and Freeing the Children for Adoption

Stephen argues on appeal that the court erred in finding he intended to abandon the boys because “the parties were engaged in reunification proceedings” for the entire period covered by the statute, and because “communication was limited” through the reunification proceedings. These assertions, even if true, do not demonstrate there was insufficient evidence to support the court's determination that Stephen intentionally abandoned his children.

First, we dispose of Stephen's assertion that the trial court “found credible” Stephen's testimony that he believed “his ability to contact his children was limited until the termination of reunification proceedings by the relevant court.” This is a mischaracterization of the court's statement of decision. The decision explicitly declares: “Stephen was not credible.” The court points to Stephen's testimony that he was not the aggressor in the September 2011 incident at J.K.'s birthday party “despite

the fact that the police interviewed all witnesses, looked at alleged injuries, and . . . [Stephen] pled guilty.”

The trial court is not required to believe an appellant’s testimony. (*In re B. J. B.* (1986) 185 Cal.App.3d 1201, 1212.) And, it is not for us to pass on the credibility of any of the witnesses; we therefore do not question the court’s determination that Stephen’s testimony was not credible.

In addition, we do not agree with Stephen’s assertion that the court did not “properly weigh evidence according to the statute.” The evidence here is not only substantial, it unequivocally supports the court’s determination Stephen intended to abandon his children.

In connection with the minors’ move to Wisconsin, the November 2011 settlement agreement provided Stephen a clear and meaningful path to re-establish a relationship with his children. He was granted one weekend visit per month to be supervised for one year. After completing his court-ordered domestic violence programs, the agreement allowed Stephen unsupervised visits. He did not exercise any of these visits. Stephen thwarted the one attempt he did make in 2012 to visit the children in Wisconsin under the pretense that his life was somehow in danger because Jacqueline was present with the boys at the agreed upon meeting place. Nothing in the settlement agreement precluded Jacqueline from being present with the nanny and the children to facilitate the transfer. All were ready for the visit. Stephen’s bizarre assertion that his life and liberty were in jeopardy because of Jacqueline’s mere presence in no way absolves him from deserting his children at the last minute.

There was no contact between Stephen and his children in 2013 or 2014. Stephen did not initiate telephone communication

with the children, nor did he accept or return their calls. In fact, he blocked his phone, only agreed to talk to the boys using a voice decoder, demanded the boys call him from a pay phone, and insisted they ask him no questions. Stephen even went so far as to tell one of the boys not to call until he was 18 years old.

Stephen never meaningfully participated in reunification therapy in Wisconsin or Los Angeles. He acknowledged he never spoke to Dr. Dolezal, the reunification therapist in Wisconsin. His first conversation, albeit brief, with Dr. Shatz, the reunification therapist in Los Angeles, was in September 2013; yet, he did not sign the contract with Dr. Shatz until March 2015 and he did not meet with her in person until September 2015.

Most importantly, Stephen clearly and deliberately communicated his intent to abandon his children multiple times between February 2012 and September 2013. He repeatedly e-mailed Jacqueline asking that she initiate proceedings to terminate his parental rights and enable Marc to adopt the boys. Stephen went so far as to tell Jacqueline that if she would not agree to the adoption, she should tell the children he was dead. Beginning July 2013, Stephen continued to pursue terminating his parental rights through an attorney, who wrote several letters to Jacqueline's attorney. In September of 2012, he told Dr. Shatz he was still considering terminating his parental rights. These remarks in favor of adoption are consistent with Stephen's failure to see or talk to his sons from 2011 through October 2015, when he had a Skype call with them.

Stephen argues he cannot be held responsible for failing to communicate with his children because "communication was limited" by the courts throughout the reunification proceedings. To support this contention, Stephen asserts the trial court "found

credible that [Stephen] believe[d] his ability to contact his children was limited until the termination of reunification proceedings by the relevant court.” Not so. The court determined that Stephen’s intent to abandon the children was supported, in part, by “his acquiescence to agreements, approved by courts, that he testified he believed severely limited his ability to communicate with the children.” In other words, Stephen may have testified he believed his ability to communicate was limited by the courts, yet he agreed to all court orders and stipulations governing his contact and visitation. Moreover, he still failed to take advantage of his rights in regard to visitation and communication.

If Stephen misconstrued the orders as precluding him from having regular contact with the boys, he took no meaningful appropriate action to restart communication. We decline to construe Stephen’s October 2016 attempt to modify the custody agreement to allow him to visit his sons without completing reunification therapy, after he declined to participate consistently in such therapy and had not seen his sons since 2011, as a meaningful appropriate action to restart communication during the relevant period of abandonment.

Additionally, Stephen points to a brief exchange in his testimony to support his assertion that he initiated official proceedings to reunite with his sons in Wisconsin. We find no support for this characterization of the record. In this exchange, Jacqueline and Marc’s counsel called Stephen’s attention to a March 2013 stipulation and order from the Wisconsin court in which he agreed to cooperate with Dr. Dolezal and the appointed guardian ad litem by participating in reunification therapy. There is absolutely no evidence that this stipulation and order

arose from an act by Stephen to regain communication with the boys.

The trial court determined Stephen failed to communicate, other than token communications, with his children between September 2011 and October 2016. The record reflects Stephen did not meaningfully exercise any of his visitation rights with the children during this time; blocked efforts by the children to communicate with him by telephone; and explicitly evidenced his intent to abandon the children by pursuing the termination of his parental rights. We readily conclude substantial evidence supports the trial court's determination that Stephen intended to abandon his children far beyond the one-year statutory period.

D. Substantial Evidence Supports the Court's Determination That It Was in the Children's Best Interest to Be Freed from Stephen's Custody and Control

The best interests of a child are "paramount in interpreting and implementing the statutory scheme" governing when and how to free a child from parental custody and control. (*Neumann v. Melgar* (2004) 121 Cal.App4th 152, 162.) And, the Legislature has declared the court "*shall* consider the wishes of the child, bearing in mind the age of the child." (Fam. Code, § 7890, italics added.)

The testimony of Marc, Jacqueline, Z.K., and J.K. provides overwhelming support for the court's determination that termination of Stephen's parental rights served the best interest of the children.

Z.K. and J.K. both testified to the abuse they experienced by Stephen, as described above. Z.K., 13 years old at the time of his testimony, stated he wanted no contact with Stephen. Z.K. said he felt "very uncomfortable" around Stephen, was scared of

him, and could not trust Stephen after all the abuse in North Carolina. Z.K. also testified to an incident with his pet rat. According to Z.K., Stephen used to tie the pet rat to a lamp pole, cause its paws to bleed, and feed it feces.

Z.K. wanted Marc to be his father because he already saw him as his “real Dad.” Z.K. testified Marc attended most of his award ceremonies, sporting events, birthday parties, and other significant events. According to Z.K., Marc played basketball with the boys, rode bikes with them at the beach, and played board games. “I love my Dad right here [Marc] much more,” Z.K. testified. “I don’t love Steve at all. I don’t like Steve. I have nothing to say to him other than the fact that I want him out of my life.” Z.K. testified if Marc adopted him, he would “feel like a weight has been taken off my back. I won’t have to worry about Steve. I’ll just feel a lot safer, secure.” Z.K. acknowledged he might not see his father again, at least until he was an adult, and was “okay” with that.

J.K., 11 years old at the time he testified, stated he did not want to see Stephen at all after what happened at his sixth birthday party in September 2011. He also testified that, when visiting Stephen in North Carolina, Stephen would put soap on their pancakes and laugh. J.K. recalled the incident when Stephen told them to go outside in a hurricane and locked them outside for 15 minutes. J.K. said he was “really scared,” that he and Z.K. banged on the door begging Stephen to let them in, but Stephen just laughed. When asked if he thought Stephen wanted to see him, J.K. replied, “I don’t think if he wanted to see us or if he actually cares about us, then he wouldn’t have done any of that.” J.K. testified he did not believe Stephen loved them and that he was “actually happy” about the idea that he may never

see Stephen again. J.K. testified Marc takes him to all his sports games, takes both boys to Dave and Busters, takes him to his friends' houses, and does "lots of fun things" with them.

Both Z.K. and J.K. testified they have called Marc "Daddy Marc" since they were little.

Marc testified he wanted to adopt the children because he loves them. "I have been with them. You met them. As we saw, they are amazing children. I like them. . . . They are good company, and I want to be their Dad, I hope, the rest of their lives." Marc testified he already viewed the boys as his own and he wanted to care for them. "I view them as a permanent part of my life, and I love those boys, and I will do anything for them."

Jacqueline testified that by 2017, the children "pointblank refused" to participate in any more "unfruitful reunification." Jacqueline believed "100 percent" the boys wanted Marc to adopt them. "They love him. He's a great father. He's there for them in every way." Jacqueline stated "[w]e're a great family unit. And to be honest, in the event anything happened to me, I would want the boys to stay where they are with him. They are in a good place."

On July 16, 2018, the court conducted the hearing to determine whether termination of Stephen's parental rights was in the best interests of the children. It says a lot about Stephen and his stated desire to be the minors' father that Stephen did not attend the hearing. His counsel did not present any admissible evidence that adoption was not in the children's best interest.

In conjunction with the July 16, 2018 hearing, the juvenile probation officer prepared and submitted a report pursuant to Family Code section 7851. The probation officer's report

submitted June 5, 2018 states the children are happy and healthy at home with Jacqueline and Marc. The officer observed the family interacting and concluded the children had a “strong bond” to Jacqueline and Marc, and were “flourishing.”

The testimony of the minors and respondents, along with the probation officer’s report, constitute substantial evidence supporting the trial court’s decision that terminating Stephen’s parental rights and freeing the children for adoption was in their best interest.

DISPOSITION

The judgments are affirmed. Parties to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

BIGELOW, P. J.

WILEY, J.